91-1930 (3)

No. _____

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1991

DANIEL VASQUEZ, Warden, and DANIEL E. LUNGREN, Attorney General of the State of California,

Petitioners,

v.

ROBERT JACKSON THOMPSON,

Respondent.

APPENDICES TO PETITION FOR WRIT OF CERTIORARI

DANIEL E. LUNGREN, Attorney General of the State of California
GEORGE WILLIAMSON, Chief Assistant Attorney General
GARY W. SCHONS, Senior Assistant Attorney General
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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT JACKSON THOMPSON, Petitioner-Appellee, v. DANIEL VASQUEZ, Warden, Respondent-Appellant.	No. 91-55525 D.C. No. CV-90-6605-JMI MEMORANDUM*

Appeal from the United States District Court for the Central District of California
James M. Ideman, District Judge, Presiding
Submitted** March 6, 1992

Before: HUG, D.W. NELSON, and HALL, Circuit Judges.

The district court had jurisdiction to enter a stay of execution on the basis of Thompson's request for appointment of counsel. Brown v. Vasquez, No. 90-56127 (9th Cir. Feb. 19, 1992).

AFFIRMED.

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* This disposition is not appropriate for publication and may not be cited to or

by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument pursuant to Fed. R. App. P. 34(a) and 9th Cir. R. 34.4.

APPENDIX B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT JACKSON THOMPSON, Petitioner, v. DANIEL VASQUEZ, Warden, Respondent.	CV-90-6605-JMI ORDER DENYING RESPONDENT'S MOTION TO VACATE STAY OF EXECUTION

IT IS HEREBY ORDERED:

The Court, having read and reviewed Respondent's motion to vacate the stay of execution, finds that the motion is rendered moot by this Court's granting of a stay on March 21, 1991. Therefore, Respondent's motion is hereby DENIED.

IT IS SO ORDERED.

DATED: March 27, 1991

/s/
James M. Ideman
United States District Judge

APPENDIX C

ROBERT JACKSON THOMPSON
P. O. Box C-78000
Tamal, CA 94974
In Pro Per

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT JACKSON THOMPSON, Petitioner, v. DANIEL VASQUEZ, as Warden of San Quentin State Prison, Respondent.	Case No. CV 90-6605-JMI REQUEST FOR APPOINTMENT OF COUNSEL IN DEATH SENTENCE CASE AND FOR STAY OF EXECUTION OF DEATH SENTENCE

I, Robert Jackson Thompson, request that this Court appoint an attorney to represent me in federal habeas corpus proceedings in my death sentence case. (Local Rule 26.8.4 (iv).)

On October 1, 1990, the United States Supreme Court denied my petition for writ of certiorari, following affirmance of the

judgment of death by the California Supreme Court on February 8, 1990.

The Orange County Superior Court has set December 28, 1990, as the date for execution of the judgment of death.

WHEREFORE, under Local Rule 26.8.4 (iv) of the Central District of California, petitioner Thompson requests that competent and qualified counsel be appointed to represent him in Federal habeas corpus proceedings. Petitioner further requests that this Court stay petitioner Thompson's execution of death sentence, scheduled for December 28, 1990, for forty-five (45) days to permit the appointment of counsel. (Local Rule 26.8.7(b).)

DATED: December 3, 1990

Respectfully submitted,

/s/
ROBERT JACKSON THOMPSON

ROBERT JACKSON THOMPSON
P.O. Box C-78000
Tamal, CA 94974

In Pro Per

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT JACKSON THOMPSON Petitioner, v. DANIEL VASQUEZ, as Warden of San Quentin State Prison, Respondent.	Case No. DECLARTION IN SUPPORT OF REQUEST BY PRISONER UNDER CALIFORNIA DEATH JUDGMENT FOR APPOINTMENT OF COUNSEL AND STAY OF EXECUTION

I, Robert Jackson Thompson, request that the Court appoint an attorney to represent me in death penalty habeas corpus litigation to be initiated in the federal courts in my behalf. In support of this request, I hereby declare:

1. I was sentenced to death in the Orange County Superior Court, State of California, on December 6, 1983. I am

incarcerated at San Quentin State Prison, located in Tamal, California.

2. My death sentence was affirmed by the California Supreme Court on February 8, 1990. My petition for writ of certiorari was denied on October 1, 1990.

3. I intend to file a petition for writ of habeas corpus in this Court, alleging federal constitutional errors which entitle me to relief from the judgment of death. I need the assistance of counsel in preparing and litigating the petition.

4. The attorney who represented me in the most recent state court proceedings was Hugh Anthony Levine. He has informed me that he is not available to represent me as lead counsel in federal habeas corpus proceedings.

5. I cannot afford to retain an attorney to represent me in these proceedings. I am indigent and have

substantially no assets. At present I have approximately $120.00 in my account.

I DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

DATED: December 3, 1990

/s/
ROBERT JACKSON THOMPSON

APPENDIX D

CHART ONE

CASES IN WHICH UNITED STATES DISTRICT COURTS IN CALIFORNIA HAVE STAYED STATE ORDERED EXECUTIONS IN THE ABSENCE OF A PETITION FOR WRIT OF HABEAS CORPUS

NYF=Habeas Petition Not Yet Filed

Petitioner's Last Name	District Court Case Number	District	Date of stay	Date Habeas Petiton Filed
1.Anderson	CV-92-0488-JGD	CD	1-24-92	NYF
2.Bean	CIV-S-90-0648-EJG-GGH	ED	6-8-90	7-18-91
3.Bell	C-91-1115-FMS	ND	4-12-91	NYF
4.Boyde	CV-91-2522-WDK	CD	5-13-91	NYF
5.Brown	CV-90-2815-AWT	CD	6-1-90	11-06-91
6.Burton	CV-91-1652-AWT	CD	3-27-91	NYF
7.Caro	C-89-1400-GPV	ND	4-24-89	4-27-90
8.Carrera	CV-F-90-478-EDP-P	ED	8-6-90	8-26-91
9.Coleman. C.	C-90-1588-VRW	ND	6-1-90	7-15-91
10.Coleman, R.	C-89-1906-RFP	ND	6-2-89	1-19-90

Petitioner's Name	District Court Case Number	District	Date of stay	Date Habeas Petiton Filed
11.Douglas	CV-91-3055-RSLW	CD	6-7-91	NYF
12.Fields	CV-92-0465-RG	CD	1-23-91	NYF
13.Frank	CV-91-6287-AHS	CD	11-22-91	NYF
14.Ghent	C-90-2763-WAI	ND	10-1-90	NYF
15.Hamilton	CV-F-90-363-OWW-P	ED	6-18-90	12-03-91
16.Howard	CV-88-7240-WJR	CD	1-24-89	9-25-89
17.Hunter	C-90-3275-JW	ND	11-26-90	NYF
18.Jackson	CV-91-6983-JG-DEE	CD	8-8-91	NYF
19.Jennings,M.	C-89-1360-WAI	ND	11-7-89	4-17-91
20.Jennings,W.	CV-F-91-684-OWW-P	ED	12-16-91	NYF

Petitioner's Name	District Court Case Number	District	Date of stay	Date Habeas Petiton Filed
21.Johnson	C-90-3219-DLJ	ND	11-9-90	NYF
22.Kimble	CV-90-4826-SVW	CD	9-12-90	9-17-91
23.Lang	CV-91-4061-JMI	CD	7-30-91	NYF
24.Mattson	CV-91-5453-WJR	CD	10-9-91	NYF
25.McLain	CV-89-3061-JGD	CD	5-18-89	12-28-90
26.Miller	CV-91-2652-KN	CD	5-16-91	NYF
27.Miranda	CV-89-7130-RJK	CD	12-15-89	NYF
28.Morales	CV-91-0682-DT	CD	2-8-91	NYF
29.Odle	C-88-4280-CAL	ND	10-24-88	5-31-89
30.Ramirez	CV-91-3802-CBM	CD	7-12-91	NYF

Petitioner's Name	District Court Case Number	District	Date of stay	Date Habeas Petiton Filed
31.Rich	CV-S-89-0823-EJG-GGH	ND	6-8-89	NYF
32.Robbins	CV-91-4768-TJH	CD	9-4-91	NYF
33.Siripongs	CV-89-6530-WDK	CD	11-9-89	7-6-90
34.Stankewitz	CV-F-91-616-OWW-P	ED	11-15-91	NYF
35.Taylor	C-921627-MHP	ND	5-4-92	NYF
36.Thompson,R.	CV-90-6605-JMI	CD	12-15-90	NYF
37.Thompson,T.	CV-89-3630-RAG	CD	6-15-89	1-16-90
38. Turner	CV-F-91-153-REC-P	ED	3-29-91	NYF

APPENDIX E

PAUL L. GABBERT, ESQ.
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213/399-3259

Attorney for Petitioner,
Robert Jackson Thompson

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT JACKSON THOMPSON, Petitioner, v. DANIEL VASQUEZ, as Warden of San Quentin State Prison, Respondent.	Case No. CV 90-6605-JMI DECLARATION OF KEITH ROHMAN

KEITH ROHMAN, being first dully sworn, declares:

1. I am a private investigator, licensed in the State of California under license number PI10349. I have been employed as a private investigator for the last ten years. A significant percentage of my practice has involved the field of capital litigation. At both the trial and

appellate levels, I have conducted the defense investigation on fourteen capital cases. I have testified in state and federal court as a defense investigator on dozens of occasions, including during capital trials. I have served as an instructor in the field of private investigation, and have attended numerous CLE-approved training seminar on capital litigation. I am the author of an article on reciprocal discovery in the Journal of the National Association for Criminal Investigators and the California Attorneys for Criminal Justice Forum magazine. A copy of my curriculum vitae is attached hereto as Exhibit A.

2. In addition to my investigative experience in conducting background investigations, witness interviews and compiling social histories, I have extensive experience in post-conviction interviews of jurors. I have interviewed

numerous juries as part of the post-conviction work in capital cases, and have obtained signed declarations from jurors relating to possible juror misconduct. I am also regularly retained by the Los Angeles City Attorney's Office to interview jurors post-conviction in police misconduct cases.

3. Approximately six weeks ago, at the request of attorney Paul L. Gabbert, I began a review of the materials in the case of People v. Robert Thompson. Mr. Gabbert requested that I determine what investigation, if any, should be conducted as part of the on-going post-conviction proceedings pending in the United States District Court. An associate in my office has contacted trial counsel and the trial court defense investigator, and obtained their files. I have consulted with Mr. Gabbert and representatives of the California Appellate Project regarding

this case. I have also held an initial meeting with the defense investigator Thomas Gleim, and conducted an initial review of the trial lawyers' and investigator's files.

4. There are several issues relating to the jury in this case which merit further investigation. The trial judge in the defendant's guilt trial entered the jury room to explain his failure to provide the proper verdict form to them. On another occasion, the court reporter was present in the jury room without the judge, counsel or defendant being present. The judge at the penalty re-trial gave the jury no admonition regarding note taking. There was a dictionary present in the jury room during the trial. The California Supreme Court opinion in People v. Thompson, 50 Cal.3d 134 (1990) observes that no evidence was presented on the issue of misconduct relating to the court

reporter, the dictionary or the note-taking admonition. As far as I can determine, there have been no interviews conducted with either the first guilt phase jury, or the second penalty phase jury. I believe members of these juries need to be located and interviewed about these and other possible areas of jurors misconduct.

5. Declarant is also informed that Mr. Gabbert has reviewed and summarized the entire section of the record on direct appeal pertaining to trial and penalty phase voir dire during the first guilt and penalty trials. Declarant has not yet reviewed Mr. Gabbert's summary but is aware that he had identified additional juror issues which may merit investigation. Mr. Gabbert's review of the entire record, including the second penalty trial, is in progress.

6. There are several potential mental health claims relating to the Thompson case. These include the defendant's mental state at the time of the offense, at the time of his statements to law enforcement officers, his competency to stand trial and substantial mitigating factors inexplicably not presented during the second penalty trial. While the investigation and presentation of mental health issues are regularly considered in any capital case, they are especially critical in Mr. Thompson's case given the peculiar circumstances of his personal history, and their possible effect on the voluntariness of his admissions and confession. It appears from my initial review of the record that Robert Thompson was a victim of severe child abuse. During his childhood, Thompson's father insisted that he consume alcohol with him, and then perform sexual

acts. Thompson's natural father appears to have been an alcoholic. Mr. Thompson suffered from the same affliction, and may have inherited a propensity to alcoholism. Perhaps as an outgrowth of this, Thompson has also experienced blackouts which may be an outgrowth of his alcoholism, or an indication of some form of organic brain injury.

7. In my opinion, an in-depth investigation is necessary to develop a reliable social and medical history of Mr. Thompson. This is the first step in obtaining a complete and competent mental health evaluation. WIthout a properly gathered, well-documented and complete social history, counsel will be unable to determine the extent and severity of mental dysfunctions that affected Thompson's behavior at the time of the offense, as well as at the time he made

statements to the police, and during his testimony at trial.

8. A thorough investigation necessarily involves: interviewing Thompson and others with knowledge of his history, and behavior surrounding the offense, and his trial; collecting essential life history documents such as school, medical, criminal history, institutional and employment records; obtaining appropriate records about other family members with mental disabilities or histories that may have affected Thompson's development, behavior and mental functioning. The trial lawyers' and defense investigator's files indicate that these reviews have not been done at all or not done in a complete manner.

9. An investigation should also be conducted into both trial counsel's conduct. Prior to defendant's re-trial, his first trial attorney asked to be

relieved, because of his intense dislike of the defendant. No basis for this statement appears in the record reviewed to date. An investigation should be conducted regarding any possible bias or conflicts in first trial counsel's own background which led him to become uncomfortable with handling a case of his nature. Second trial counsel appears to have been substantially less experienced. He did not present substantial mitigating evidence at the penalty trial that was presented at the first trial. The strategic and tactical basis for omitting information previously presented to the first penalty jury, who were unable to reach a verdict, also needs to be investigated.

10. Based on my experience investigating numerous capital cases, it is reasonable to anticipate the preparation and investigation into

Thompson's life history, and the events surrounding the offense and the subsequent trial will require approximately 300 hours of competent investigative time. My hourly rate for investigation is $60.00 an hour. This is in keeping with the reasonably market rate for this work in Southern California.

11. Once all of the potential issues, witnesses and documents have been identified, a comprehensive investigative plan will be formulated and presented to the Court (under seal) concurrently with Mr. Gabbert's application for my appointment. The results of the investigation will be relied upon by counsel and appropriate mental health professionals to determine Thompson's mental functioning. Evidence collected regarding the defense counsel and jury conduct will bear directly on issues to be raised in Mr. Thompson's federal habeas

corpus petition. To date, my review of trial counsel's files indicates that these necessary investigations have not been conducted on Thompson's behalf.

I declare under penalty of perjury that the foregoing is true and correct except as to those allegations made by me based on information and belief and I believe those allegations to be true.

Executed this 5th day of December, 1991, at Santa Monica, California.

/s/
KEITH ROHMAN

APPENDIX F

PAUL L. GABBERT, ESQ.
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Attorney for Petitioner,
Robert Jackson Thompson

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT JACKSON THOMPSON, Petitioner, v. DANIEL VASQUEZ, as Warden of San Quentin State Prison, Respondent.	Case No. CV 90-6605-JMI ORDER GRANTING PETITIONER'S APPLICATION FOR AN EXTENSION OF THE TEMPORARY STAY TO PERMIT SUBMISSION OF AN APPLICATION FOR THE APPOINTMENT OF A DEFENSE INVESTIGATOR; FOR CO-COUNSEL, AND TO INVESTIGATE, PREPARE AND FILE A HABEAS CORPUS PETITION; ORDER SETTING BRIEFING SCHEDULE

GOOD CAUSE APPEARING THEREFORE,

IT IS HEREBY ORDERED:

Petitioner ROBERT JACKSON THOMPSON'S ("Petitioner") application for an order for extension of temporary stay to apply for the appointment of a Defense Investigator and for Co-Counsel to investigation and to assist in the preparation and filing of a habeas corpus petition is hereby GRANTED.

The Court sets forth the following briefing schedule, in accordance with Local Rules 26.8.7(c) and 26.8.8(c) and (d):

1. Petitioner is to submit any application for the appointment of a defense investigator to investigate all petitioner's exhausted and unexhausted state claims, his investigator's plan and for the appointment of co-counsel by January 15, 1992;

2. Petitioner's investigator shall complete his investigation of all

exhausted and unexhausted state claims by April 15, 1992;

3. The petition for writ of habeas corpus shall be filed by June 15, 1992;

4. Petitioner's temporary stay of execution is extended to and including July 1, 1992.

5. Respondent is to file an answer within thirty days from the date of service of the petition, in accordance with the Local Rules.

6. Petitioner is to file a traverse within thirty days after respondent has filed the answer, in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: December 16, 1991.

/s/
UNITED STATES DISTRICT JUDGE

PRESENTED BY:

/s/
PAUL L. GABBERT
Attorney for Petitioner